

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 PATRICIA KENNEDY,

5 Plaintiff,

6 v.

7 UNIVERSITY MEDICAL CENTER,

8 Defendant.
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Case No. 2:16-cv-02418-APG-PAL

**ORDER GRANTING MOTION TO
DISMISS COUNTS ONE AND TWO
WITHOUT PREJUDICE**

(ECF No. 12)

10 Defendant University Medical Center (UMC) moves to dismiss the first and second
11 claims in plaintiff Patricia Kennedy's complaint. UMC argues that Kennedy's first two claims
12 for retaliatory discharge are barred by claim or issue preclusion because those claims are being
13 adjudicated in another case in this district. In that case, Judge Boulware granted summary
14 judgment in UMC's favor on Kennedy's retaliatory discharge claims. *Kennedy v. Univ. Med. Ctr.*,
15 2:14-cv-01678-RFB-PAL, ECF No. 69. Kennedy has moved to alter or amend that order. ECF
16 No. 71. No decision has been issued. UMC argues Kennedy should not get a second bite at the
17 apple by pleading those same claims in this case.

18 Kennedy responds that she is not seeking a second bite at the apple. Rather, she contends
19 she pleaded the claims in this case as a protective measure because UMC asserted as an
20 affirmative defense in the other case that Kennedy had not exhausted her administrative remedies.
21 Kennedy argues she filed the claims in this case to make clear she has now exhausted her
22 administrative remedies.

23 Kennedy's first two claims are already being litigated in another case in this court. That
24 case has proceeded to summary judgment, a motion to amend the summary judgment order is
25 pending, and a proposed joint pretrial order has been filed.¹ *Kennedy v. Univ. Med. Ctr.*, 2:14-cv-
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28 ¹ Judge Boulware granted summary judgment in UMC's favor on the merits and did not address
exhaustion. ECF No. 69. In response to Kennedy's motion to alter or amend, UMC did not reassert the

1 01678-RFB-PAL, ECF Nos. 69, 71, 78. In the interests of judicial economy and managing the
2 court's docket, I grant UMC's motion and dismiss without prejudice Kennedy's first and second
3 claims for retaliatory discharge.

4 IT IS THEREFORE ORDERED that defendant University Medical Center's motion to
5 dismiss **(ECF No. 12) is GRANTED**. Counts one and two of plaintiff Patricia Kennedy's
6 complaint are dismissed without prejudice.

7 Dated: August 21, 2017.

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11 ANDREW P. GORDON
12 UNITED STATES DISTRICT JUDGE
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28 exhaustion argument. ECF No. 74. Nor is exhaustion raised as an issue in the proposed joint pretrial
order. ECF No. 78.